

Exhibit 1

1 JOHN K. VINCENT
2 United States Attorney
3 BENJAMIN B. WAGNER
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FILED

007 - 1 2001

CLERK OF DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)

12 Plaintiff,)

13 v.)

14 RICHARD SHEARER,)

15 Defendant.)
16)
17)

No. Cr. S-00-345 FCD

PLEA AGREEMENT

18 I.

19 INTRODUCTION

20 A. Scope of Agreement: The Superseding Indictment in this
21 case charges the defendant with one count of conspiracy to defraud
22 the United States in violation of 18 U.S.C. § 371, and three counts
23 of making and subscribing to false tax returns in violation of 26
24 U.S.C. § 7206(1). This document contains the complete Plea
25 Agreement between the United States Attorney's Office for the
26 Eastern District of California (the "Government") and the defendant
27
28

1 regarding this criminal case. The defendant understands
2 that nothing in this agreement affects the defendant's personal
3 federal tax liability, or restricts the United States or the
4 Internal Revenue Service from initiating any collection or civil
5 enforcement action relating thereto.

6 **B. Contingent Agreement:** The defendant understands that the
7 parties intend this plea agreement to be part of a "package"
8 arrangement involving both this agreement and a separate plea
9 agreement between the Government and co-defendant Richard D.
10 Pfeiffer, and that the Government's willingness to enter into either
11 plea agreement is contingent upon each of those two defendants
12 entering into, and fulfilling their obligations under, their plea
13 agreements. Accordingly, if either this defendant or defendant
14 Pfeiffer breaches or withdraws from his plea agreement, the
15 Government will have the right to withdraw from both plea
16 agreements.
17

18 **C. Charges:** Count One of the Superseding Indictment, to which
19 the defendant herein agrees to plead guilty, charges a violation of
20 section 371 of Title 18, conspiracy to defraud the United States,
21 and has the following three elements: (1) that the defendant agreed
22 with at least one other person to defraud the United States by
23 impeding, impairing, obstructing and defeating the functions of the
24 Internal Revenue Service in the ascertainment, computation,
25 assessment and collection of income taxes, through the use of
26 deceit, craft, trickery and other dishonest means, (2) that the
27 defendant joined the conspiracy knowing of its object and intending
28

1 to help accomplish it, and (3) that one of the members of the
2 conspiracy performed at least one overt act for the purpose of
3 carrying out the conspiracy. Count Fifteen of the Superseding
4 Indictment, to which the defendant herein agrees to plead guilty,
5 charges a violation of section 7206(1) of Title 26, making and
6 subscribing to a false tax return, and has the following four
7 elements: (1) that the defendant signed a tax return that contained
8 false information as to a material matter, that is, it understated
9 the defendant's income, (2) that the defendant knew that the
10 information was false, (3) that the return was signed subject to the
11 penalties of perjury, and (4) that the defendant acted willfully.

12 **D. Court Not a Party:** The Court is not a party to this Plea
13 Agreement. Sentencing is a matter solely within the discretion of
14 the Court, the Court is under no obligation to accept any
15 recommendations made by the Government, and the Court may in its
16 discretion impose any sentence it deems appropriate up to and
17 including the statutory maximum stated in this Plea Agreement. If
18 the Court should impose any sentence up to the maximum established
19 by the statute, the defendant cannot, for that reason alone,
20 withdraw his guilty plea, and he will remain bound to fulfill all of
21 the obligations under this Agreement. The defendant understands
22 that neither the prosecutor, defense counsel, nor the Court can make
23 a binding prediction or promise regarding the sentence he will
24 receive.
25

26 ///

27 ///

II.

DEFENDANT'S OBLIGATIONS

A. **Guilty Pleas:** The defendant will plead guilty to Count One and Count Fifteen in the Superseding Indictment, charging conspiracy to defraud the United States in violation of 18 U.S.C. § 371, and making and subscribing to a false tax return in violation of 26 U.S.C. § 7206(1). The defendant agrees that he is in fact guilty of these offenses and that the facts set forth in the Factual Basis attached hereto as Exhibit A are accurate.

B. **Special Assessment:** The defendant agrees to pay a special assessment of \$200.00 at the time of sentencing by delivering a check or money order payable to the United States District Court to the United States Probation Office immediately before the sentencing hearing. The defendant understands that this Plea Agreement is voidable by the Government if he fails to pay the assessment prior to that hearing.

C. **Restitution:** Pursuant to 18 U.S.C. section 3663(a)(3), the defendant agrees to pay restitution to the Internal Revenue Service of \$5,000, in partial satisfaction of his outstanding federal tax obligations to the IRS. Such amount will be credited by the IRS against the principal amounts which the defendant owes IRS, in accordance with standard IRS procedure. The defendant understands that this agreement does not relieve him from any legal obligation to pay additional amounts due and owing to the IRS.

///

III.

THE GOVERNMENT'S OBLIGATIONS

A. **Dismissals:** The Government agrees to move, at the time of sentencing, to dismiss with prejudice the remaining counts against this defendant in the pending Superseding Indictment.

B. **Acceptance of Responsibility Recommendation:** If the United States Probation Office determines that a three-level reduction in the defendant's offense level for his full and clear demonstration of acceptance of responsibility is appropriate under U.S.S.G. § 3E1.1, the Government will not oppose such a reduction.

C. **Sentencing Recommendation:** If the defendant qualifies for a three level reduction in his offense level for acceptance of responsibility under section 3E1.1 of the sentencing guidelines, the Government will recommend that the defendant be sentenced in accordance with the stipulations set forth below, and at the low end of the applicable sentencing guideline range.

D. **Other Charges:** The Government agrees not to criminally prosecute the defendant for any other violation of the federal tax laws which occurred during the period from January 1, 1995 to the present.

E. **Future Practice of Profession:** The Government agrees that it has no basis for opposing, and will not oppose, any application by the defendant to continue to practice medicine following the service of any prison term imposed in this case. Upon request, the Government will provide a letter to that effect to any California

1 State licensing board or other relevant professional regulatory
2 body.

3 IV.

4 MAXIMUM SENTENCE

5 A. **Maximum Penalty:** The maximum sentence which the Court can
6 impose on Count One is 5 years of incarceration, a 3 year period of
7 supervised release, a fine of \$250,000, and a special
8 assessment of \$100. The maximum sentence which the Court can impose
9 on Count Fifteen is 3 years of incarceration, a 1 year period of
10 supervised release, a fine of \$250,000, and a special
11 assessment of \$100.
12

13 B. **Violations of Supervised Release:** The defendant understands
14 and agrees that if he violates a condition of supervised release at
15 any time during the term of supervised release, the Court may revoke
16 the term of supervised release and require the defendant to serve up
17 to 2 additional years imprisonment.
18

19 V.

20 SENTENCING DETERMINATION

21 A. **Statutory Authority:** The defendant understands that a
22 sentencing guideline range for this case will be determined by the
23 Court pursuant to the Sentencing Reform Act of 1984 (18 U.S.C.
24 §§ 3551-3742 and 28 U.S.C. §§ 991-998). The defendant further
25 understands that the Court will impose a sentence within that
26 guideline range, unless the Court finds that there is a basis for
27 departure (either above or below the range) because there exists an
28

1 aggravating or mitigating circumstance of a kind, or to a degree,
2 not adequately taken into consideration by the Sentencing Commission
3 in formulating the guidelines.

4 **B. Stipulations Affecting Guidelines Calculation:** The
5 Government and the defendant agree that there is no material dispute
6 as to the following sentencing guidelines variables and therefore
7 stipulate to the following:

8 **1. Base Offense Level:** The parties agree that the
9
10 applicable guideline sections for establishing the base offense
11 level are 2T1.9, 2T1.1, and 2T4.1, and that at an evidentiary
12 hearing the Government is currently in a position to prove that
13 the amount of presently determinable federal tax loss
14 attributable to the defendant's offense conduct in this case,
15 and to his relevant conduct consisting of the federal tax loss
16 associated with counts Thirteen and Fourteen in the Superseding
17 Indictment, and the federal tax loss associated with other
18 clients of defendant Crockett's from Northern California
19 during the period of the charged conspiracy which was
20 reasonably foreseeable to the defendant, is between \$120,000
21 and \$200,000, resulting in a base offense level under USSG
22 §2T1.1(a)(1) of 15.

23 **2. Specific Offense Characteristics:** The parties agree
24
25 that the offense involved sophisticated concealment, in that it
26 involved the use of false invoices and offshore bank accounts,
27 resulting in another two-level increase pursuant to USSG
28

1 §2T1.1(b)(2).

2 3. **Multiple Count Rules:** The parties agree that Counts 1
3 and 15 should be grouped together into a single unit for
4 purposes of the multiple count rules in Chapter 3, Part D of
5 the sentencing guidelines.

6 4. **Acceptance of Responsibility:** Assuming that the
7 defendant satisfies the Probation Officer that he has accepted
8 responsibility, the parties agree that the defendant should
9 receive a three-level reduction for acceptance of
10 responsibility pursuant to § 3E1.1.

11 5. **Other Adjustments:** The parties agree that no specific
12 offense characteristics or adjustments apply to this defendant
13 in this case other than those referenced above.

14 6. **Sentencing Range:** The parties agree that the
15 defendant is a criminal history category I, that the total
16 adjusted offense level pursuant to the foregoing stipulations
17 is an offense level 14, and that the corresponding sentencing
18 range is therefore 15 to 21 months in prison.

19 C. **Departures:** The parties agree that the Government shall
20 not move for an upward departure from the otherwise applicable
21 sentencing guideline range.

22 VI.

23 WAIVERS

24 A. **Trial Rights:** The defendant understands that by pleading
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guilty he is waiving the following constitutional rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to be assisted at trial by an attorney, who would be appointed if necessary; (d) to confront and cross-examine witnesses against him; (e) to summon witnesses to testify in his defense; and (f) not to be compelled to incriminate himself.

B. Waiver of Appeal and Collateral Attack: Pursuant to this Plea Agreement, the defendant waives the right to appeal or otherwise collaterally attack his guilty plea, whether by way of a motion pursuant to 28 U.S.C. § 2255 or otherwise, and, if the defendant's sentence is consistent with the stipulations set forth above regarding the sentencing guidelines variables, he similarly waives his right to appeal or collaterally attack his sentence.

C. **Waiver of Attorneys' Fees and Costs:** The defendant agrees to waive all rights under the "Hyde Amendment", Section 617, P.L. 105-119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the investigation and prosecution of all charges in the above-captioned matter and of any related allegations (including without limitation any charges to be dismissed pursuant to this Agreement and any charges previously dismissed).

VII.

ENTIRE PLEA AGREEMENT

Other than this Plea Agreement, no agreement, understanding, promise, or condition between the Government and the defendant

1 exists, nor will such agreement, understanding, promise, or
2 condition exist unless it is committed to writing and signed by the
3 defendant, counsel for the defendant, and counsel for the United
4 States.

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VIII.

APPROVALS AND SIGNATURES

A. **Defense Counsel:** I have read this Plea Agreement and have
discussed it fully with my client. The Plea Agreement accurately
and completely sets forth the entirety of the agreement. I concur
in my client's decision to plead guilty as set forth in this
Agreement.

DATED:

10/1/2001

Matthew Gilmartin

MATTHEW GILMARTIN
Attorney for Defendant


B. **Defendant:** I have read this Plea Agreement including
Exhibit A, and carefully reviewed every part of it with my attorney.
I understand it, and I voluntarily agree to it. Further, I have
consulted with my attorney and fully understand my rights with
respect to the provisions of the Sentencing Guidelines which may
apply to my case. No other promises or inducements have been made
to me, other than those contained in this Agreement. In addition,
no one has threatened or forced me in any way to enter into this

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1 Plea Agreement. Finally, I am satisfied with the representation of
2 my attorney in this case.

3
4
5 DATED: 10/1/01


RICHARD SHEARER, Defendant

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12 **C. Attorney for United States:**

13 I accept and agree to this Plea Agreement on behalf of the
14 Government.

15
16 DATED: 10/1/01

17
18 JOHN K. VINCENT
United States Attorney


19
20 By: 
21 BENJAMIN B. WAGNER
22 Assistant U.S. Attorney
23
24
25
26
27
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EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	No. Cr. S-00-345 FCD
Plaintiff,)	
)	
v.)	FACTUAL BASIS FOR
)	PLEA OF GUILTY
RICHARD SHEARER,)	
)	
Defendant.)	

The defendant and the Government agree that the following is an accurate description of the factual basis for the defendant's plea of guilty to Count 1 in the Superseding Indictment, charging the defendant with conspiracy to defraud the United States, a felony violation of Title 18, United States Code, Section 371, and to Count 15 in the Superseding Indictment, charging the defendant with making and subscribing to a false tax return, a felony violation of Title 26, United States Code, Section 7206(1):

1. At all times relevant to the conduct alleged in the Superseding Indictment, defendant Richard Shearer was a doctor who lived and worked in the Eastern District of California. In approximately early 1996, the defendant became a client of Lonnie Crockett, who operated a business known as Farr West Consulting, located in Bountiful, Utah. Crockett was in the business of, among other things, providing accounting, trust and tax advice, and creating and maintaining trusts, or so-called "unincorporated organizations." Crockett had clients from across the United States.

1 2. Beginning in December, 1995, and continuing through August,
2 2000, defendant Shearer conspired with Lonnie D. Crockett and with
3 other Crockett clients who were also medical professionals who
4 resided in the same area and were acquaintances of the defendant,
5 including Daniel Bullock and Richard D. Pfeiffer, to defraud the
6 United States by impairing, impeding, obstructing and defeating the
7 lawful functions of the Internal Revenue Service in the
8 ascertainment, computation, assessment, and collection of federal
9 income tax liabilities with respect to their income.

10 3. No later than late 1995, defendant Richard Shearer
11 deposited substantial net income from his medical practice into a
12 bank account he controlled that was in the name of a trust he
13 controlled. In furtherance of the conspiracy to conceal such income
14 from the Internal Revenue Service, defendant Shearer and other co-
15 conspirators then cycled such U.S. income through bank accounts in
16 Utah controlled by defendant Crockett and through foreign bank
17 accounts, and then back to bank accounts in the Eastern District of
18 California which were controlled by defendant Shearer and the co-
19 conspirators. The cycling of funds by Shearer was accomplished
20 through a series of sham transactions which had no economic purpose
21 other than the evasion of income taxes. Crockett was paid a fee for
22 each such "loop" of funds.

23 4. In connection with the transfer of funds from Shearer's
24 domestic trust bank account to a bank account in Utah controlled by
25 defendant Crockett in the name of Atlantic Telesis, Shearer received
26 phony invoices, sent in the name of Atlantic Telesis at the
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1 direction of Crockett, in amounts corresponding to the funds sent by
2 Shearer to Crockett for routing through the offshore system of bank
3 accounts. The invoices purported to be for services rendered by
4 Atlantic Telesis to Shearer's medical practice, when in truth and in
5 fact, no such services with such value were rendered by Atlantic
6 Telesis.

7 5. The object of the cycling of funds through the various
8 bank accounts was to conceal from the Internal Revenue Service the
9 fact that such funds, which constituted U.S. income earned by
10 Shearer through his medical practice, were being routed back to
11 Shearer, and then used by Shearer for his personal benefit and
12 enjoyment, without being reported to the IRS as income. For each of
13 the years 1996, 1997 and 1998, defendant Shearer had his medical
14 practice pay him wages, which he reported to the IRS as income in
15 tax returns for each of those years. Such wages consisted of a
16 small portion of the actual net income of his medical practice. In
17 each of those years, a much larger portion of his net income from
18 his practice was concealed from the IRS through the system of
19 accounts described above, and was not reported as income on the
20 defendant's tax returns.
21

22 6. Throughout the period of the conspiracy, defendant Shearer
23 was aware that his co-conspirators Bullock and Pfeiffer were also
24 using the Crockett system of domestic and offshore bank accounts to
25 conceal from the IRS income which they earned from their medical
26 practices.

27 7. In furtherance of the conspiracy, on or about October 28,
28

1 1998, Richard Shearer caused a check for \$225, payable to Farr West,
2 to be written on the bank account of Strawberry Valley Family Trust,
3 a trust controlled by Richard Shearer.

4 8. On or about October 14, 1999, and pursuant to the
5 conspiracy described above, defendant Shearer made and signed a 1998
6 joint U.S. Individual Income Tax Return, Form 1040. The return was
7 signed under penalty of perjury. The return contained materially
8 false information, that is, it reported taxable income of only
9 \$17,000, and did not report in excess of \$100,000 in income to
10 defendant Shearer that had been earned through Shearer's medical
11 practice in the year 1998. The defendant knew that the return
12 materially understated his actual income, and acted willfully in
13 subscribing to the false return.
14

15 9. If the case were to proceed to trial, the Government would
16 prove the foregoing through the testimony of investigating IRS
17 Criminal Investigations Special Agents, the testimony of bank
18 employees, accountants and other witnesses, and documents including
19 copies of correspondence, memoranda, forms and other documents
20 relating to the movement of funds as described above, bank account
21 and bank wire transfer records, checks, and other evidence.
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Exhibit 2

1 JOHN K. VINCENT
2 United States Attorney
3 BENJAMIN B. WAGNER
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CLERK OF DISTRICT COURT
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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)

12 Plaintiff,)

13 v.)

14 DANIEL BULLOCK,)

15 Defendant.)
16)
17)

No. Cr. S-00-345 FCD

18 PLEA AGREEMENT

19 I.

20 INTRODUCTION

21 A. Scope of Agreement: The Superseding Indictment in this
22 case charges the defendant with one count of conspiracy to defraud
23 the United States in violation of 18 U.S.C. § 371, and four counts
24 of making and subscribing to false tax returns in violation of 26
25 U.S.C. § 7206(1). This document contains the complete Plea
26 Agreement between the United States Attorney's Office for the
27 Eastern District of California (the "Government") and the defendant
28

1 regarding this criminal case. The defendant understands
2 that nothing in this agreement affects the defendant's personal
3 federal tax liability, or restricts the United States or the
4 Internal Revenue Service from initiating any collection or civil
5 enforcement action relating thereto.

6 **B Charges:** Count One of the Superseding Indictment, to which
7 the defendant herein agrees to plead guilty, charges a violation of
8 section 371 of Title 18, conspiracy to defraud the United States,
9 and has the following three elements: (1) that the defendant agreed
10 with at least one other person to defraud the United States by
11 impeding, impairing, obstructing and defeating the functions of the
12 Internal Revenue Service in the ascertainment, computation,
13 assessment and collection of income taxes, through the use of
14 deceit, craft, trickery and other dishonest means, (2) that the
15 defendant joined the conspiracy knowing of its object and intending
16 to help accomplish it, and (3) that one of the members of the
17 conspiracy performed at least one overt act for the purpose of
18 carrying out the conspiracy. Count Five of the Superseding
19 Indictment, to which the defendant herein agrees to plead guilty,
20 charges a violation of section 7206(1) of Title 26, making and
21 subscribing to a false tax return, and has the following four
22 elements: (1) that the defendant signed a tax return that contained
23 false information as to a material matter, that is, it understated
24 the defendant's income, (2) that the defendant knew that the
25 information was false, (3) that the return was signed subject to the
26 penalties of perjury, and (4) that the defendant acted willfully.
27
28

1 **D. Court Not a Party:** The Court is not a party to this Plea
2 Agreement. Sentencing is a matter solely within the discretion of
3 the Court, the Court is under no obligation to accept any
4 recommendations made by the Government, and the Court may in its
5 discretion impose any sentence it deems appropriate up to and
6 including the statutory maximum stated in this Plea Agreement. If
7 the Court should impose any sentence up to the maximum established
8 by the statute, the defendant cannot, for that reason alone,
9 withdraw his guilty plea, and he will remain bound to fulfill all of
10 the obligations under this Agreement. The defendant understands
11 that neither the prosecutor, defense counsel, nor the Court can make
12 a binding prediction or promise regarding the sentence he will
13 receive.
14

15 **II.**

16 **DEFENDANT'S OBLIGATIONS**

17 **A. Guilty Pleas:** The defendant will plead guilty to Count One
18 and Count Five in the Superseding Indictment, charging conspiracy to
19 defraud the United States in violation of 18 U.S.C. § 371, and
20 making and subscribing to a false tax return in violation of 26
21 U.S.C. § 7206(1). The defendant agrees that he is in fact guilty of
22 these offenses and that the facts set forth in the Factual Basis
23 attached hereto as Exhibit A are accurate.
24

25 **B. Special Assessment:** The defendant agrees to pay a special
26 assessment of \$200.00 at the time of sentencing by delivering a
27 check or money order payable to the United States District Court to
28

1 the United States Probation Office immediately before the sentencing
2 hearing. The defendant understands that this Plea Agreement is
3 voidable by the Government if he fails to pay the assessment prior
4 to that hearing.

5 **C. Restitution:** Pursuant to 18 U.S.C. section 3663(a)(3), the
6 defendant agrees to pay restitution to the Internal Revenue Service
7 of \$5,000, in partial satisfaction of his outstanding federal tax
8 obligations to the IRS. Such amount will be credited by the IRS
9 against the principal amounts which the defendant owes IRS, in
10 accordance with standard IRS procedure. The defendant understands
11 that this agreement does not relieve him from any legal obligation
12 to pay additional amounts due and owing to the IRS.
13

14 **III.**

15 **THE GOVERNMENT'S OBLIGATIONS**

16 **A. Dismissals:** The Government agrees to move, at the time of
17 sentencing, to dismiss with prejudice the counts against this
18 defendant in the Indictment and the remaining counts against this
19 defendant in the pending Superseding Indictment.
20

21 **B. Acceptance of Responsibility Recommendation:** If the
22 United States Probation Office determines that a three-level
23 reduction in the defendant's offense level for his full and clear
24 demonstration of acceptance of responsibility is appropriate under
25 U.S.S.G. § 3E1.1, the Government will not oppose such a reduction.

26 **C. Sentencing Recommendation:** If the defendant qualifies for
27 a three level reduction in his offense level for acceptance of
28

responsibility under section 3E1.1 of the sentencing guidelines, the Government will recommend that the defendant be sentenced in accordance with the stipulations set forth below, and at the low end of the applicable sentencing guideline range.

D. Other Charges: The Government agrees not to criminally prosecute the defendant for any other violation of the federal tax laws which occurred during the period from January 1, 1995 to the present.

E. Future Practice of Profession: The Government agrees that it has no basis for opposing, and will not oppose, any application by the defendant to continue to practice medicine following the service of any prison term imposed in this case. Upon request, the Government will provide a letter to that effect to any California State licensing board or other relevant professional regulatory body.

IV.

MAXIMUM SENTENCE

A. **Maximum Penalty:** The maximum sentence which the Court can impose on Count One is 5 years of incarceration, a 3 year period of supervised release, a fine of \$250,000, and a special assessment of \$100. The maximum sentence which the Court can impose on Count Five is 3 years of incarceration, a 1 year period of supervised release, a fine of \$250,000, and a special assessment of \$100.

B. Violations of Supervised Release: The defendant understands and agrees that if he violates a condition of supervised release at

1 any time during the term of supervised release, the Court may revoke
2 the term of supervised release and require the defendant to serve up
3 to 2 additional years imprisonment.

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6 **SENTENCING DETERMINATION**

7 **A. Statutory Authority:** The defendant understands that a
8 sentencing guideline range for this case will be determined by the
9 Court pursuant to the Sentencing Reform Act of 1984 (18 U.S.C.
10 §§ 3551-3742 and 28 U.S.C. §§ 991-998). The defendant further
11 understands that the Court will impose a sentence within that
12 guideline range, unless the Court finds that there is a basis for
13 departure (either above or below the range) because there exists an
14 aggravating or mitigating circumstance of a kind, or to a degree,
15 not adequately taken into consideration by the Sentencing Commission
16 in formulating the guidelines.

17 **B. Stipulations Affecting Guidelines Calculation:** The
18 Government and the defendant agree that there is no material dispute
19 as to the following sentencing guidelines variables and therefore
20 stipulate to the following:
21

22 **1. Base Offense Level:** The parties agree that the
23 applicable guideline sections for establishing the base offense
24 level are 2T1.9, 2T1.1, and 2T4.1, and that at an evidentiary
25 hearing the Government is currently in a position to prove that
26 the amount of presently determinable federal tax loss
27 attributable to the defendant's offense conduct in this case,
28

1 and to his relevant conduct consisting of the federal tax loss
2 associated with counts Two, Three and Four in the Superseding
3 Indictment, and the federal tax loss associated with other
4 clients of defendant Crockett's from Northern California during
5 the period of the charged conspiracy which was reasonably
6 foreseeable to the defendant, is between \$200,000 and \$325,000,
7 resulting in a base offense level under USSG §2T1.1(a)(1) of
8 16.

9 **2. Specific Offense Characteristics:** The parties agree
10 that the offense involved sophisticated concealment, in that it
11 involved the use of false invoices and offshore bank accounts,
12 resulting in another two-level increase pursuant to USSG
13 §2T1.1(b)(2).

14 **3. Multiple Count Rules:** The parties agree that Counts 1
15 and 12 should be grouped together into a single unit for
16 purposes of the multiple count rules in Chapter 3, Part D of
17 the sentencing guidelines.

18 **4. Acceptance of Responsibility:** Assuming that the
19 defendant satisfies the Probation Officer that he has accepted
20 responsibility, the parties agree that the defendant should
21 receive a three-level reduction for acceptance of
22 responsibility pursuant to § 3E1.1.

23 **5. Other Adjustments:** The parties agree that no specific
24 offense characteristics or adjustments apply to this defendant
25 in this case other than those referenced above.
26
27
28

1 **6. Sentencing Range:** The parties agree that the
2 defendant is a criminal history category I, that the total
3 adjusted offense level pursuant to the foregoing stipulations
4 is an offense level 15, and that the corresponding sentencing
5 range is therefore 18 to 24 months in prison.

6 **C. Departures:** The parties agree that the Government shall
7 not move for an upward departure from the otherwise applicable
8 sentencing guideline range.
9

10 **VI.**

11 **WAIVERS**

12 **A. Trial Rights:** The defendant understands that by pleading
13 guilty he is waiving the following constitutional rights: (a) to
14 plead not guilty and to persist in that plea if already made; (b) to
15 be tried by a jury; (c) to be assisted at trial by an attorney, who
16 would be appointed if necessary; (d) to confront and cross-examine
17 witnesses against him; (e) to summon witnesses to testify in his
18 defense; and (f) not to be compelled to incriminate himself.
19

20 **B. Waiver of Appeal and Collateral Attack:** Pursuant to this
21 Plea Agreement, the defendant waives the right to appeal or
22 otherwise collaterally attack his guilty plea, whether by way of a
23 motion pursuant to 28 U.S.C. § 2255 or otherwise, and, if the
24 defendant's sentence is consistent with the stipulations set forth
25 above regarding the sentencing guidelines variables, he similarly
26 waives his right to appeal or collaterally attack his sentence.
27

28 **C. Waiver of Attorneys' Fees and Costs:** The defendant agrees

1 to waive all rights under the "Hyde Amendment", Section 617, P.L.
2 105-119 (Nov. 26, 1997), to recover attorneys' fees or other
3 litigation expenses in connection with the investigation and
4 prosecution of all charges in the above-captioned matter and of any
5 related allegations (including without limitation any charges to be
6 dismissed pursuant to this Agreement and any charges previously
7 dismissed).

8
9 **VII.**

10 **ENTIRE PLEA AGREEMENT**

11 Other than this Plea Agreement, no agreement, understanding,
12 promise, or condition between the Government and the defendant
13 exists, nor will such agreement, understanding, promise, or
14 condition exist unless it is committed to writing and signed by the
15 defendant, counsel for the defendant, and counsel for the United
16 States.

17 **VIII.**

18 **APPROVALS AND SIGNATURES**

19
20 **A. Defense Counsel:** I have read this Plea Agreement and have
21 discussed it fully with my client. The Plea Agreement accurately
22 and completely sets forth the entirety of the agreement. I concur
23 in my client's decision to plead guilty as set forth in this
24 Agreement.

25
26 DATED: 10/1/01

27 
28 JENNIFER PRAGER SODARO
Attorney for Defendant

1 **B. Defendant:** I have read this Plea Agreement including
2
3 Exhibit A and carefully reviewed every part of it with my attorney.
4 I understand it, and I voluntarily agree to it. Further, I have
5 consulted with my attorney and fully understand my rights with
6 respect to the provisions of the Sentencing Guidelines which may
7 apply to my case. No other promises or inducements have been made
8 to me, other than those contained in this Agreement. In addition,
9 no one has threatened or forced me in any way to enter into this
10 Plea Agreement. Finally, I am satisfied with the representation of
11 my attorney in this case.

12
13
14 DATED: 10/1/01


DANIEL BULLOCK, Defendant

15
16
17
18 **C. Attorney for United States:**

19
20 I accept and agree to this Plea Agreement on behalf of the
21 Government.

22
23 DATED: 10/1/01

24 JOHN K. VINCENT
25 United States Attorney

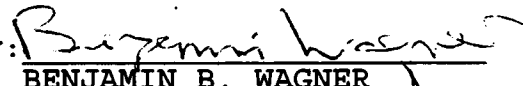
26
27 By: 
28 BENJAMIN B. WAGNER
 Assistant U.S. Attorney

Exhibit 3

**ORIGINAL
FILED**

DEC 31 2001

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY

DEPUTY CLERK

1 JOHN K. VINCENT
United States Attorney
2 BENJAMIN B. WAGNER
Assistant U.S. Attorneys
3 501 "I" Street, Suite 10-100
Sacramento, California 95814
4 Telephone: (916) 554-2745

5
6
7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
9

10 UNITED STATES OF AMERICA,) CR S-00-345 FCD
11)
Plaintiff,) GOVERNMENT'S OBJECTIONS TO
12) PRESENTENCE REPORT, RESPONSE TO
v.) DEFENDANT'S OBJECTION, AND
13) SENTENCING MEMORANDUM
14 RICHARD SHEARER,)
15)
Defendant.) Date: January 7, 2002
Time: 9:00 am
Crtrm: 2

16 The Government respectfully submits this memorandum in order to
17 set forth its objections to the presentence report for defendant
18 Richard Shearer, and to advise the Court of the Government's
19 sentencing recommendation. The defendant is scheduled to be
20 sentenced on January 7, 2002. Other than as indicated below, the
21 Government has no objection to any of the statements of fact,
22 guideline calculations, or policy statements contained in, or
23 omitted from, the presentence report.
24

25 The Probation Officer calculated that the total offense level
26 is 16, that the defendant's criminal history category is I, and that
27 the corresponding range is thus 21 to 27 months in prison.
28 Presentence report for defendant Richard Shearer, dated November 30,

1 2001 ("Shearer PSR") at ¶ 60.

2 The Probation Officer's guideline calculation was based on the
3 determination that the total tax loss attributable to defendant
4 Shearer consisted only of his own tax loss, in the amount of
5 \$93,817. Shearer PSR ¶ 29. Although the defendant pleaded guilty to
6 participating in a tax evasion conspiracy with his friends and co-
7 defendants Bullock and Pfeiffer, none of their tax loss was counted
8 as relevant conduct with respect to Shearer. Pursuant to USSG
9 §2T1.4(a)(1) and §2T4.1(I), because the total tax loss amount was
10 more than \$70,000 but less than \$120,000, the base offense level was
11 calculated as a 14. Shearer PSR ¶ 29.

12 The Probation Officer then assessed a two level increase for
13 sophisticated means, pursuant to USSG §2T1.4(b)(2). Shearer PSR ¶
14 30. Because the Probation Officer concluded that the defendant had
15 not accepted responsibility with the meaning of USSG §3E1.1, no
16 decrease in the offense level under that section was recommended.
17 Shearer PSR ¶ 32. The total adjusted offense level, therefore, was
18 calculated as a level 16. Shearer PSR ¶ 33.

20 The Government agrees generally with the manner in which the
21 guideline range was calculated. Its only objection is to the
22 Probation Officer's failure to count any of the tax loss associated
23 with co-defendants Bullock and Pfeiffer as relevant conduct for
24 defendant Shearer. For the reasons set forth below, the Government
25 asserts that the evidence supports the inclusion of at least some
26 portion of Bullock and Pfeiffer's tax loss as relevant conduct
27 against Shearer, and that the Court should find that the total tax
28 loss attributable to Shearer from all sources is between \$120,000

1 and \$200,000, resulting in a base offense level of 15, one level
2 higher than the base offense level as calculated by the Probation
3 Officer. The resulting total offense level would therefore be a
4 level 17 if the defendant receives no reduction for acceptance of
5 responsibility.

6 **I. Objection to Base Offense Level -- ¶ 29**

7 Pursuant to USSG §1B1.3, a defendant is accountable for "all
8 reasonably foreseeable acts" by his co-defendants in a conspiracy
9 that were in furtherance of the jointly undertaken criminal
10 activity. USSG §1B1.3. Here, although defendant Shearer pleaded
11 guilty to participating with his friends Daniel Bullock and Richard
12 Pfeiffer in a tax evasion conspiracy which lasted for years, the
13 Probation Officer assigned him no tax loss other than his own.
14 Shearer PSR ¶ 29. By limiting the defendant's accountability to
15 only his own tax loss, the Probation Officer recommends no
16 punishment beyond what Shearer would be subject to as a result of
17 his guilty plea to the false tax return charge, count 15, thus
18 rendering the conspiracy conviction essentially meaningless.

19 Relevant conduct is not determined by the scope of "all acts
20 that were undertaken by the defendants in furtherance of the
21 conspiracy" as indicated in the presentence report. Shearer PSR ¶
22 27. Rather, it is determined by reference to "all reasonably
23 foreseeable acts and omissions of others in furtherance of the
24 jointly undertaken criminal activity that occurred during the
25 commission of the offense of conviction," in preparation for the
26 offense, or in attempting to avoid detection for the offense. USSG
27
28

1 §1B1.3. In determining the total tax loss attributable to an
2 offense, "all conduct violating the tax laws should be considered as
3 part of the same course of conduct or common scheme of plan unless
4 the evidence demonstrates that the conduct is clearly unrelated."
5 USSG §2T1.1, comment (n.2).

6 The Probation Officer's decision not to count any tax loss of
7 Bullock or Pfeiffer as relevant conduct appears to turn on his
8 conclusion that it does not appear that Shearer "profited from, or
9 significantly assisted in" the others' conduct. Shearer PSR ¶ 27.
10 That is not the proper measure of whether relevant conduct should be
11 included in the tax loss calculation, however. From the guidelines
12 quoted above, it seems clear that the only relevant issue is the
13 scope of the conduct by others in furtherance of the conspiracy that
14 was reasonably foreseeable to this defendant. The guidelines do not
15 permit the Court the discretion to disregard relevant conduct which
16 was reasonably foreseeable to this defendant but from which he did
17 not directly profit. As many courts have noted, collective criminal
18 action, such as a conspiracy, constitutes a greater danger to the
19 public, and conspiracy defendants should be punished for the
20 reasonably foreseeable acts of their co-conspirators in furtherance
21 of the conspiracy.¹

22
23
24
25 ¹ The all-or-nothing approach to relevant conduct is also
26 the source of the Government's objection to the base offense level
27 with respect to both Bullock and Pfeiffer. As to Bullock, the
28 Probation Officer counted all of the tax loss associated with
Pfeiffer and Shearer as relevant conduct. As to Pfeiffer and
Shearer, however, the Probation Officer assessed zero tax loss
against the defendants beyond their own tax loss. This approach
appears to ignore the calibrated, "reasonably foreseeable" approach
mandated by the guidelines when apportioning loss among co-
conspirators.

1 In this case, all three defendants pleaded guilty to
2 participating in a conspiracy, and the conspiracy was active for
3 several years.² Shearer participated in numerous meetings with
4 Crockett, Bullock and Pfeiffer in which the functioning of the tax
5 evasion conspiracy was discussed. As noted below, he was an officer
6 of one of Pfeiffer's trusts. Some tax loss associated with
7 Shearer's co-defendants was clearly foreseeable to Shearer.
8 Accordingly, the total loss for Shearer should include both
9 Shearer's own tax loss, which as noted in paragraph 29 of the
10 presentence report was \$93,817, plus some significant additional
11 amount of tax loss associated with Bullock and Pfeiffer.

12 Determining the amount of Bullock and Pfeiffer's tax loss that
13 can be said to have been reasonably foreseeable to Shearer is not an
14 easy task, and cannot be determined with precision. The guidelines
15 recognize that in many cases the amount of tax loss may be
16 uncertain, and they observe that "the guidelines contemplate that
17 the court will simply make a reasonable estimate based on the
18 available facts." USSG §2T1.1, comment (n.1). See also USSG §2T1.9,
19 comment (backg'd) (Klein conspiracy "typically is complex and may be
20 far-reaching, making it quite difficult to evaluate the extent of
21 the revenue loss caused.")

22 Viewing the evidence in the light most favorable to the
23 defendant, Shearer must have known that if his own tax loss was
24 nearly \$95,000, that of his two co-defendants would have been at
25 _____
26

27 ² Even before the conspiracy charged in this case, Shearer
28 was active with Bullock and Pfeiffer in a separate tax evasion
conspiracy headed by Ed Cox of Florida, to whom Shearer refers in
his "Statement of the Offense," attached to the Shearer presentence
report.

1 least that much again, for a total tax loss of nearly \$200,000.
2 There is no evidentiary basis to claim, however, that he must have
3 known that the total loss for all three of them would have been over
4 \$200,000. That determination was the basis for the stipulation in
5 the plea agreement, which calls for a finding that the total tax
6 loss, including relevant conduct, was between \$120,000 and \$200,000.
7 Shearer Plea Agreement at VB1.

8 The Government therefore objects to the determination at
9 paragraph 29 of the presentence report that the total tax loss is
10 limited to the \$93,817 associated with Shearer's own tax returns,
11 and thus is less than \$120,000. In the Government's view, the total
12 tax loss attributable to this defendant should be more than \$120,000
13 but less than \$200,000, for a base offense level of 15. Such a
14 finding comports with the plea agreement, and is warranted by a
15 reasonable reading of the known facts.
16

17 The Government otherwise agrees with the sentencing guideline
18 calculations in the presentence report. If the Government's
19 objection is sustained, therefore, the total offense level would be
20 a level 17, and the corresponding sentencing guideline range would
21 be 24 months to 30 months in prison.

22 **II. Response to Defendant's Objection**

23 As noted above, the Probation Officer did not recommend a
24 reduction for acceptance of responsibility, and the defendant has
25 objected to that recommendation. Objection to Sentencing Report for
26 Defendant Shearer, received December 31, 2001 ("Shearer Mot."). The
27 Government's response follows.
28

1 In order to qualify for a sentence reduction under USSG §3E1.1,
2 however, the defendant must "clearly demonstrate[] acceptance of
3 responsibility for his offense." USSG §3E1.1(a). Such conduct must
4 include truthfully admitting the conduct comprising the offenses of
5 conviction. USSG §3E1.1, comment. (n.1(a)). The offenses of
6 conviction in this case both include a mens rea element of intent to
7 defraud. 18 U.S.C. § 371; 26 U.S.C. § 7206(1). As to this aspect of
8 the offense -- the critical element -- Dr. Shearer's statements
9 since the entry of his plea affirmatively reject any acceptance of
10 responsibility. The Probation Officer's recommendation is well
11 supported by the record.

12 In his statements to the press since his conviction, in his
13 statement to the Probation Officer, in the "Statement of the
14 Offense" submission attached to the presentence report, and in his
15 recent motion, Shearer concedes only that he relied on bad advice or
16 exercised bad judgment. Shearer Mot. at 3; Shearer PSR ¶¶ 22, 23,
17 32. The content of the many character reference letters received by
18 the Court on Dr. Shearer's behalf also make it clear that he has
19 been telling his community that he only relied on bad advice or
20 exercised poor judgment. Defendant Shearer's statement contrasts,
21 in particular, with co-defendant Bullock's statement, in which
22 Bullock acknowledges that he engaged in fraudulent conduct, allowing
23 antagonism toward the IRS and greed to dictate his priorities.

24 The Government responds below to Dr. Shearer's "Statement of
25 the Offense" attached to the presentence report.

26 Shearer's claims that he did not know that his conduct
27 constituted illegal tax evasion until his meeting in this office in
28

1 September 2001 (which took place over a year after he was indicted,
2 in an indictment that spelled out the scheme in detail), is simply
3 not credible. His self-serving statement is intended to place on
4 others the blame that he should be shouldering himself.

5 First, Dr. Shearer was previously involved in a similar tax
6 evasion scheme involving Ed Cox. Dr. Shearer well knew that Cox was
7 shut down by law enforcement -- he received a mailing from the FBI
8 indicating that Mr. Cox was the subject of a criminal investigation,
9 and Lonnie Crockett has told the Government that Shearer and the
10 others openly discussed the fact that Cox was headed for jail. In
11 light of these facts, Shearer's dismissal of Cox as someone that was
12 merely hard to communicate with does not tell the whole story.

13 Second, Dr. Shearer spent funds returned from the offshore
14 system on his own personal benefit, and he himself decided how much
15 of his own actual income to report in each calendar year. It is not
16 credible that he believed that under the U.S. federal tax system he
17 could spend any amount of money he had earned for his own purposes,
18 and make his own assessment as to how much income to report each
19 year.
20

21 Third, the thrust of Dr. Shearer's statement, that he merely
22 relied on Crockett for administration of a system that Shearer
23 believed was lawful and legitimate, is contradicted by the facts.
24 The assertion at the second page of his statement that this system
25 of multiple bank accounts was intended to "maintain a paper trail so
26 that everything could be accounted for," is outrageous. Dr. Shearer
27 has never cooperated with the IRS or anyone else trying to follow
28 the money trail, and he knew perfectly well that the system was

1 designed to mask, not elucidate, the true nature of the
2 transactions.

3 Attached hereto as Exhibit A are several examples of phony
4 invoices from Atlantic Telesis which Shearer received in response to
5 sending the attached checks to Crockett for routing through the
6 offshore system. The invoices purport to bill Shearer for "business
7 consulting and planning," "business management" and other
8 "professional services." Shearer knew that in fact he had never
9 received any such services from Atlantic Telesis, and that the
10 invoices merely came in response to, and in the same amount of, the
11 money he had sent offshore. Moreover, far from paying for such
12 services, Shearer fully expected to receive that money back, less a
13 small fee to Crockett. An intent to obfuscate could hardly be more
14 clear.
15

16 Similarly, with reference to back dating documents, Shearer
17 claims towards the bottom of the first page of his statement that
18 only an address correction for EIN purposes made it "appear" that a
19 trust created by Crockett was backdated. In fact, Shearer knew that
20 trust documents created by Crockett were backdated. Shearer claims
21 on the first page that he learned about Crockett through an article
22 in the July/August 1995 issue of Preparedness Journal, which is
23 attached as Exhibit A to his statement. He says he only contacted
24 Crockett sometime after reviewing that article. Attached as Exhibit
25 B hereto, however, is the signature page of a trust document
26 relating to a Pfeiffer trust created by Crockett (and notarized by
27 one of his associates, David Orr) in which Shearer was an officer
28 (the "Protector"). That trust, like the many others created for

1 these defendants by Lonnie Crockett, was backdated to January 1,
2 1995 -- a time period before Shearer says he even met Crockett.

3 Fourth, while he claims that he was relatively isolated in
4 Northern California, he makes an effort to show that he had done
5 research to support his view that the system was legal. His claim,
6 and the attachments to his statement, merely show that he was
7 capable of inquiring as to the legality of the offshore tax evasion
8 system and of understanding that the system he entered into was
9 fraught with peril. Indeed, one of the attachments, Exhibit G to
10 his statement, plainly put him on notice as to the illegality of the
11 system. The last three substantive paragraphs of the letter from
12 the IRS point Dr. Shearer directly to relevant statutes that would
13 have demonstrated the illegality of the Crockett offshore system.
14 The letter states that, under section 672(f) of the Internal Revenue
15 Code, a U.S. beneficiary of a foreign trust is treated as an owner
16 of the trust for tax purposes if he makes a gift to the foreign
17 grantor of the trust. It also indicates that under section 679, a
18 U.S. person who transfers property to a foreign trust is taxed as
19 the owner of that money if there is a U.S. beneficiary of that
20 foreign trust. The attachments to his statement merely confirm that
21 he decided to follow only those authorities which it was in his own
22 financial interest to follow.

24 Finally, while Shearer purports to have been dazzled by the
25 words "advice of counsel," there is no evidence that he ever sought
26 his own qualified tax counsel before sending tens of thousands of
27 dollars to Lonnie Crockett. Instead, he claims that he merely
28 accepted Crockett's assurances, when Crockett relayed to him that

1 his system had been blessed by other attorneys whom Shearer did not
2 know. Crockett, as Shearer well knew, was not independent -- he was
3 selling Shearer a service. Shearer's claim that he merely relied on
4 Crockett's assurances of legality, particularly after the bad
5 experience Shearer describes with Cox, rings false. Shearer seems
6 determined not to admit what he must have known to be true: he
7 willingly participated in sham transactions to defraud the IRS.

8 The only remorse expressed by Dr. Shearer is that he is in a
9 predicament caused, in part, by his dealings with co-defendant
10 Crockett. He nowhere admits that he acted with intent to defraud
11 his Government. Rather than accepting responsibility for his
12 fraudulent conduct, Shearer attempts to displace all blame on to co-
13 defendant Crockett. He has clearly failed to manifest acceptance of
14 responsibility within the meaning of USSG §3E1.1.
15

16 **III. Restitution**

17 The offenses of conviction are not offenses to which mandatory
18 restitution attaches, and in any event the principal amount of the
19 back taxes owed by defendant Shearer to the IRS has not yet been
20 determined with specificity. The parties stipulated in the plea
21 agreement, however, pursuant to 18 U.S.C. § 3663(a)(3), that the
22 defendant would pay \$5,000 to the IRS in partial satisfaction of the
23 federal income taxes he owes. Shearer Plea Agreement IIC. The
24 Probation Officer reported that the defendant had a net worth of
25 \$753,463, disposable income of nearly \$1600 per month, and insurance
26 assets. Shearer PSR ¶¶ 54-56. Nonetheless, the Probation Officer
27 did not follow the stipulation in the plea agreement and recommend
28 restitution, observing only that "the IRS has the resources to

1 collect any monies owed by the defendant." Shearer PSR ¶ 58. The
2 Probation Officer did recommend a fine in the amount of \$22,500. PSR
3 ¶ 69.

4 The Government objects to the Probation Officer's decision not
5 to recommend any restitution. The fact that the IRS has the
6 capability of pursuing restitution is an irrelevant consideration.
7 Many other victims in other types of cases also have the capability
8 of pursuing civil remedies to obtain restitution. General
9 considerations relating to the ordering of restitution are not
10 suspended in criminal tax cases, when the Government is the victim.
11 Moreover, the IRS has been unsuccessful in obtaining tax payments
12 from Shearer in recent years; his plea of guilty in this case does
13 not insure the swift collection of back taxes.

14
15 Section 5E1.1(a)(1) of the sentencing guidelines states that
16 the court "shall enter a restitution order for the full amount of
17 the victim's loss, if such order is authorized under 18 U.S.C. . . .
18 § 3663 . . ." Section 3663(a)(3) states that the court may order
19 restitution "to the extent agreed to by the parties in a plea
20 agreement." As noted above, in the plea agreement for this
21 defendant in this case, the parties expressly agreed "[p]ursuant to
22 18 U.S.C. section 3663(a)(3)," that the defendant would pay
23 restitution of \$5,000 to the IRS. Section 5E1.1(a)(1) therefore
24 appears to require that restitution be ordered to the extent that
25 the parties have agreed to it under section 3663(a)(3).

26 While it is clear that the defendant owes far more than \$5,000,
27 it is indisputable that he owes at least that much, and in order to
28 avoid the necessity for a full multiple year IRS audit in the

1 context of this proceeding, mandating partial payment of his debt as
2 restitution is proper. The defendant clearly has the ability to pay
3 restitution, and payment of some amount now would ameliorate some of
4 the harm caused by the defendant. Payment of restitution in the
5 amount of \$5,000 would also stop the accrual of interest and
6 penalties on that amount of back taxes.

7 While the Government believes that the recommended fine is in
8 accordance with the sentencing guidelines, in the Government's view
9 is more important that the IRS be made whole than the full fine be
10 paid to another agency of the Government. The Government notes that
11 in determining the amount of the fine, the court must consider any
12 restitution payments that the defendant is obligated to make. USSG
13 §5E1.2(d)(4). The Government would not object to a \$5,000 reduction
14 in the amount of the recommended fine in order to enable the
15 defendant to pay restitution in that amount.
16

17 **IV. Government's Sentencing Recommendation**

18 In accordance with the Plea Agreement, the Government
19 recommends that the defendant be sentenced at the low end of the
20 guideline sentencing range, after the determination of the final
21 guideline sentencing range following ruling on the objections
22 addressed above. The prison term should be imposed on each count,
23 to run concurrently. A three year term of supervised release is
24 recommended. The Government does not object to a reasonable self-
25 surrender date.
26

27 The Government also recommends that the defendant be ordered,
28 pursuant to 18 U.S.C. § 3663(a)(3) and USSG §5E1.1(a)(1), to pay

1 \$5,000 restitution to the IRS, and that he be ordered to pay the
2 minimum fine.

3 Finally, the defendant should be ordered to pay a special
4 assessment of \$200, and costs of prosecution (which are mandatory
5 under 26 U.S.C. § 7206(2)) of \$1,381.75. A Bill of Costs and
6 supporting documentation for that amount has been filed.
7

8
9 DATED: December 31, 2001

Respectfully submitted,

JOHN K. VINCENT
United States Attorney


11
12 By: 
13 BENJAMIN WAGNER
14 Assistant U.S. Attorney
15
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EXHIBIT A

Atlantic Telesis Mgmt. Co. Trust
144 West Parrish Lane #124
Centerville, UT 84014

TO: Asteroid Black Mgt. Co. Trust
717 Michelle Drive
Mt. Shasta, CA 96067

INVOICE:01102489
PAGE: 1
DATE: 04/15/98

04/15/98 Business management

5,000.00

TOTAL BALANCE DUE: \$5,000.00

Please Pay Upon Receipt. Thank You!!



MT. SHASTA EAR, NOSE, & THROAT
MEDICAL OFFICE
701 PINE STREET
MT. SHASTA, CA 96067

THREELINE COMMUNITY BANK
MOUNT SHASTA, CA 96067
90-37801211

2865

4/20/98

PAY TO THE
ORDER OF ATLANTIC TELESIS MANAGEMENT CO. TRUST

Five thousand and 00/100..... \$ *****5,000.00

ATLANTIC TELESIS MANAGEMENT CO
144 WEST PARRISH LANE
SUITE 124
CENTERVILLE, UTAH 84014

MEMO

⑈002865⑈ ⑆121137807⑆

0008500665⑈

TWO SIGNATURES REQUIRED

By Steven M. McLeod, Trustee
Debra A. Brown

DOLLARS
☒ Security features
included.
Details on back.

Atlantic Telesis Mgmt. Co. Trust
144 West Parrish Lane #124
Centerville, UT 84014

TO: Asteroid Black Mgt.Trust
717 Michelle Dr.
Mt. Shasta, CA 96067

INVOICE:011025608
PAGE: 1
DATE: 05/1/98

5/19/98	Business Consultation and Planning	\$ 5,000.00
---------	------------------------------------	-------------

TOTAL BALANCE DUE: \$5,000.00

Please Pay Upon Receipt. Thank You!!



TIMBERLINE
COMMUNITY BANK
309 N. MOUNT SHASTA BLVD., P.O. BOX 299
MOUNT SHASTA, CALIFORNIA 96067

Pay to the order of Atlantic Telesis
Five thousand only

5/14 1998 90-37801 (211)
\$ 5,000.00
~~DEPOSITED~~

By Daniel B. Butler Trustee

⑆⑆2⑆⑆37807⑆ 000850⑆553⑆

Transaction Receipt

BANK ONE
To One

FIRST LINE SHOWS:

Bank #	Branch #	Teller #	Sequence #	Post Date	Time
--------	----------	----------	------------	-----------	------

0032 00285 06
ACCT# 13659429
CHECKING DEPOSIT

1084 05/19/1998 13:31
\$23,000.00
05/19/1998

Atlantic Telesis
Siskiyou 10,000
Asteroid 5000
Maverick 8000
\$ 23000

Type of Transaction

Amount

Calendar Date

This transaction record should be retained until you have verified it with your statement.
All items received are subject to terms and conditions as posted in this bank.

Control # 07048 Rev 10/97

Atlantic Telesis Mgmt. Co. Trust
144 West Parrish Lane #124
Centerville, UT 84014

TO: Asteroid Black Mgt. Trust
717 Michelle Dr.
Mt. Shasta, CA 96067

INVOICE:011025615
PAGE: 1
DATE: 5/8/98

5/8/98	Business Consultation and Planning	\$3,000.00
--------	------------------------------------	------------

TOTAL BALANCE DUE: \$3,000.00

Please Pay Upon Receipt. Thank You!!

ASTEROID BLACK MANAGEMENT & TRUST (II)
 701 PINE ST.
 MOUNT SHASTA, CA 96067

DATE 5/28/98

PAY TO THE ORDER OF Atlantic Telesis Management Co. T \$ 3,000.00
Three thousand dollars only DOLLARS

TIMBERLINE COMMUNITY BANK
 309 N. MOUNT SHASTA BLVD., P.O. BOX 299
 MOUNT SHASTA, CALIFORNIA 96067

MEMO _____

By Daniel Bullard, Trustee

⑆121137807⑆0101 0008501853⑈

28	29	30	31	TOTAL PLEASE RE-ENTER TOTAL HERE ↓
TOTAL DEPOSIT				3000.00

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL
 EACH ITEM MUST BE PROPERLY ENDORSED

⑆532450160⑆

913659429⑈

BANK ONE
 To One.

Transaction Receipt

POSTLINE SHOWS: Bank # Branch # Teller # Sequence # Post Date Time

0032 00285 02 : 6594 06/02/1998 09:21
 ACCT# 13659429 \$3,000.00
 CHECKING DEPOSIT 06/02/1998

Type of Transaction Amount Calendar Date
 This transaction record should be retained until you have verified it with your statement.
 All items received are subject to terms and conditions as posted in this bank.

Catalog # 07048 Rev. 10/97

Atlantic Telesis Mgmt. Co. Trust
144 West Parrish Lane #124
Centerville, UT 84014

TO: Asteroid Black Management Co. Trust
717 Michelle Dr.
Mt. Shasta, CA 96067

INVOICE:011025641
PAGE: 1
DATE: 6/1/98

6/1/98 Business Consultation and Planning

\$5,000.00

TOTAL BALANCE DUE: \$5,000.00

Please Pay Upon Receipt. Thank You!!

ASTEROID BLACK MANAGEMENT J. TRUST (II) 90-37807 1211
 701 PINE ST. 0008501653
 MOUNT SHASTA, CA 96067
 DATE 6/10/98

PAY TO THE ORDER OF Atlantic Telesis \$ 5,000.00
Five thousand dollars only DOLLARS

TIMBERLINE
 COMMUNITY BANK
 309 N. MOUNT SHASTA BLVD., P.O. BOX 299
 MOUNT SHASTA, CALIFORNIA 96067

MEMO By David Bullock, Trustee

⑆ 12113780710103 0008501653 ⑈

BANK ONE
 To One.

Transaction Receipt

1ST LINE SHOWS: Bank # Branch # Teller # Sequence # Post Date Time

0032 00285 01 4355 06/15/1998 12:43
 ACCT# 13659429 *
 CHECKING DEPOSIT \$5,691.00
 06/15/1998


Amount
 Type of Transaction

Calendar Date
 Catalog # 07048 Rev. 1097

This transaction record should be retained until you have verified it with your statement.
 All items received are subject to terms and conditions as posted in this bank.

ASTEROID BLACK MANAGEMENT CO. TRUST (II) 90-3780/1211 120
701 PINE ST. 0008501653
MOUNT SHASTA, CA 96067
DATE 8/18/98

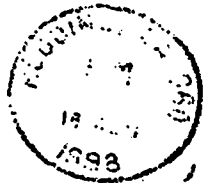
PAY TO THE ORDER OF Atlantic Telesis Mgmt. Co. Tr. \$23,000.00
Twenty-three thousand only DOLLARS

 **TIMBERLINE**
COMMUNITY BANK
309 N. MOUNT SHASTA BLVD., P.O. BOX 299
MOUNT SHASTA, CALIFORNIA 96067

MEMO _____
By *David R. Ball, Trustee*

⑆121137807⑆0120 0008501653⑈

L. Richard Shearer, M.D.
Ear, Nose & Throat Specialist
Comprehensive care for your entire family



Atlantic Telesis Management Co.
144 West Parrish Lane, Suite 124
Centerville, Utah 84014

84014-1821



Atlantic Telesis Mgt Co Trust
144 West Parrish Lane #124
Centerville, UT 84014

TO: Asteroid Black Mgt Trust
717 Michelle Drive
Mt. Shasta, CA 96067

Invoice No. 00000341
Date 11/20/98

8/18/98

Professional Services Rendered

\$23,000.00

Thank you!

\$23,000.00

\$0.00

\$23,000.00

EXHIBIT B

BRACKET FAMILY HOLDING TRUST

PROTECTOR'S AGREEMENT

This agreement is entered into between HOLLY HAWKINS, the Settlor of BRACKET FAMILY HOLDING TRUST, a Private Trust, and L. RICHARD SHEARER. In acceptance of this appointment, the Protector, L. RICHARD SHEARER, does hereby agree that he accepts the following powers and none other:

(a) The power to remove a Trustee with the unanimous vote of any remaining Trustee(s), not including successor(s); and the power to approve the selection and appointment of successor Trustee(s) without the concurrence of any other parties. The Protector shall also (in accordance with Section 11.1) approve the selection of three (3) independent parties, chosen by the Trustee(s), who shall constitute a Committee of Arbitrators for the purpose of resolving deadlocks and/or disagreements. (See Section 11.1.)

(b) The power or right to resign, at anytime, by delivering to a new or Successor Protector his letter of resignation. (The Protector may not resign until a new Protector is chosen and appointed by the same with the Trustee(s) being informed of the appointment.) The letter of resignation and new Protector's Agreement and appointment shall be maintained by the Trust record keeper in the Trust records. Any third party to whom the letter of resignation is shown may rely upon the validity of that letter as the true state of affairs with respect to this Trust.

(c) In the event any Trustee is unavailable to participate in the process of his or her removal, or the selection of a Successor Trustee, the Protector shall have the authority to execute an affidavit, under oath, setting forth the unavailability of the Trustee. The affidavit shall be filed in the official records of this Trust and a copy of the affidavit shall be mailed by certified mail to the last known address of the Trustee. The affidavit shall be filed with the local recorder's office wherein the Trust is currently domiciled. The execution of the affidavit and appointment by the Protector of a Successor Trustee shall be done simultaneously.

(d) The Protector shall have no other powers.

IN WITNESS WHEREOF, the Settlor, HOLLY HAWKINS, and the Protector, L. RICHARD SHEARER, do hereby affix their signature on this, the 1st day of January, 1995.

SETTLOR

By: 

HOLLY HAWKINS

STATE OF UtahCOUNTY OF Salt LakeSUBSCRIBED AND SWORN to before me, a notary public, on this the 1st day of January, 1995.

My Commission Expires:

1-24-98

NOTARY PUBLIC

PROTECTOR

By: 

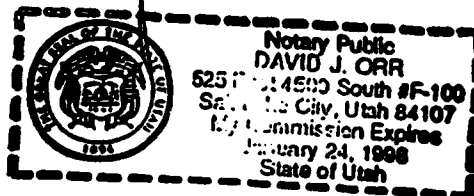
L. RICHARD SHEARER

STATE OF UtahCOUNTY OF Salt LakeSUBSCRIBED AND SWORN to before me, a notary public, on this the 1st day of January, 1995.

My Commission Expires:

1-24-98

NOTARY PUBLIC



000195

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers.

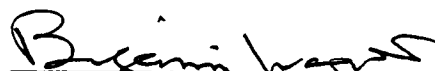
That on December 31, 2001, he served a copy of the attached Government's Objection to Presentence Report, Response to Defendant's Objection and Sentencing Memorandum by placing said copy in a postage paid envelope addressed to the person hereinafter listed, and by depositing said envelope in the United States mail at Sacramento, California, and by fax to the number below. In addition, he served a copy on the Probation Officer by Inter-Office delivery.

SERVED BY MAIL

SERVED BY INTER-OFFICE DELIVERY

Matthew Gilmartin, Esq.
P.O. Box 939
N. Olmstead, OH 44070-0939
fax: (216) 485-0800

Philip R. Hendley, Jr.
U.S. Probation Office
501 "I" Street, Suite 2500
Sacramento, CA 95814


BENJAMIN B. WAGNER

1 JOHN K. VINCENT
United States Attorney
2 BENJAMIN B. WAGNER
Assistant U.S. Attorneys
3 501 "I" Street, Suite 10-100
Sacramento, California 95814
4 Telephone: (916) 554-2745

DEC 31 2001

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY
DEPUTY CLERK

5
6
7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
9

10 UNITED STATES OF AMERICA,) CR S-00-345 FCD
11)
Plaintiff,) GOVERNMENT'S OBJECTIONS TO
12) PRESENTENCE REPORT AND
v.) SENTENCING MEMORANDUM
13)
DANIEL BULLOCK,) Date: January 7, 2002
14) Time: 9:00 am
Defendant.) Crtrm: 2
15)

16 The Government respectfully submits this memorandum in order to
17 set forth its objections to the presentence report for defendant
18 Daniel Bullock, and to advise the Court of the Government's
19 sentencing recommendation. The defendant is scheduled to be
20 sentenced on January 7, 2002. Other than as indicated below, the
21 Government has no objection to any of the statements of fact,
22 guideline calculations, or policy statements contained in, or
23 omitted from, the Presentence Report.

24 The Probation Officer calculated that the total offense level
25 is 16, that the defendant's criminal history category is I, and that
26 the corresponding range is thus 21 to 27 months in prison.
27 Presentence report for defendant Daniel Bullock, dated December 21,
28

1 2001 ("Bullock PSR") at ¶ 64.

2 The Probation Officer's guideline calculation was based on the
3 determination that the total tax loss attributable to defendant
4 Bullock consisted of (1) his own tax loss, in the amount of \$152,256
5 (Bullock PSR ¶ 29), and (2) tax loss associated with co-defendants
6 Pfeiffer and Shearer, which is attributable to Bullock as relevant
7 conduct under USSG § 1B1.3, of (a) \$139,840 in tax loss associated
8 with co-defendant Pfeiffer (Bullock PSR ¶ 30), and (b) \$93,817 in
9 tax loss associated with co-defendant Shearer (Bullock PSR ¶ 31).
10 The total tax loss counted against defendant Bullock, therefore, was
11 the sum of those three amounts, or \$385,913. Bullock PSR ¶ 32.
12 Pursuant to USSG §2T1.4(a)(1) and §2T4.1(L), because the total tax
13 loss amount was more than \$325,000 but less than \$550,000, the base
14 offense level was calculated as a 17. Bullock PSR ¶ 32.

15 The Probation Officer then assessed a two level increase for
16 sophisticated means, pursuant to USSG §2T1.4(b)(2), and awarded a
17 three level increase for acceptance of responsibility under USSG
18 §3E1.1. Bullock PSR ¶¶ 33-36. The total adjusted offense level,
19 therefore, was calculated as a level 16. Bullock PSR ¶ 37.

20 The Government agrees generally with the manner in which the
21 guideline range was calculated. Its only objection is to the scope
22 of the tax loss associated with co-defendants Pfeiffer and Shearer
23 which was included as relevant conduct as to defendant Bullock. For
24 the reasons set forth below, the Government asserts that the
25 evidence does not support the inclusion of all of Pfeiffer and
26 Shearer's tax loss as relevant conduct against Bullock, and that the
27 Court should find that the total tax loss attributable to Bullock
28

1 from all sources is between \$200,000 and \$325,000, resulting in a
2 base offense level of 16, one level lower than the base offense
3 level as calculated by the Probation Officer. The resulting total
4 offense level would therefore be a level 15.

5 **I. Objection to Base Offense Level -- ¶¶ 25-32**

6 The Government agrees that, pursuant to USSG §1B1.3, the loss
7 amount attributable to defendant Bullock should include both his own
8 tax loss and relevant conduct which constitutes "all reasonably
9 foreseeable acts" by co-defendants Pfeiffer and Shearer that were in
10 furtherance of the jointly undertaken criminal activity. All three
11 defendants pleaded guilty to participating in a conspiracy, and
12 Bullock was clearly active both in creating his own tax loss and in
13 assisting the other defendants with the administration of the trusts
14 they used in the course of the conspiracy. As the Probation Officer
15 observed in the Presentence Report, there is no doubt that Bullock
16 assisted his co-defendants in carrying out the conspiracy and
17 personally profited -- although to a minor degree -- from his role
18 as a trustee for the co-defendants' trusts which facilitated the
19 unlawful conduct. Bullock PSR ¶ 27. Accordingly, the total loss for
20 Bullock should include both Bullock's own tax loss, which the
21 Probation Officer identified in paragraph 29 of the Presentence
22 Report was \$152,256, plus some significant additional amount of tax
23 loss associated with Pfeiffer and Shearer.

24
25 The Government's point of departure from the Presentence
26 Report, however, is that simply adding the total tax loss for
27 Pfeiffer and Shearer to the total for Bullock is neither a fair or
28

1 accurate method of determining the total tax loss. The relevant
2 conduct that should be counted against Bullock is that tax evasion
3 conduct by the co-defendants which was "reasonably foreseeable" to
4 Bullock.¹ While it may be difficult to arrive at a precise dollar
5 figure for the amount of co-conspirator tax loss that was reasonably
6 foreseeable to defendant Bullock, that is not a reason to simply
7 pile on all of his co-defendants' tax loss as relevant conduct under
8 USSG §1B1.3.

9 It is important to note that while Bullock assisted the other
10 defendants in administering their trusts, and knew of their
11 participation in the tax evasion scheme, there is no evidence that
12 he was knowledgeable about their annual income, that he reviewed
13 their tax returns, or that he gave them any advice as to how much of
14 their annual income they should conceal. Indeed, there is no
15 evidence that Bullock ever even saw the personal federal tax returns
16 for Pfeiffer and Shearer. Those defendants decided independently
17 how much of their income to report to the IRS and how much to
18 conceal. Bullock certainly knew that in the course of the
19 conspiracy, Pfeiffer and Shearer would evade a substantial amount of
20 federal income taxes. The Government does not believe that the
21 evidence supports a finding that Bullock could have reasonably
22 foreseen that Pfeiffer would be responsible for \$139,840 in tax
23 loss, and that Shearer would be responsible for \$93,817 in tax loss
24

25
26 ¹ The all-or-nothing approach to relevant conduct is also
27 the source of the Government's objection to the base offense level
28 with respect to both Pfeiffer and Shearer. In those cases, the
Probation Officer assessed zero tax loss against the defendants
beyond their own tax loss. This approach appears to ignore the
calibrated, "reasonably foreseeable" approach mandated by the
guidelines when apportioning loss among co-conspirators.

1 (PSR ¶¶ 30-31).

2 As noted above, determining the amount of Pfeiffer and
3 Shearer's tax loss that can be said to have been reasonably
4 foreseeable to Bullock is not an easy task, and cannot be determined
5 with precision. The guidelines recognize that in many cases the
6 amount of tax loss may be uncertain, and they observe that "the
7 guidelines contemplate that the court will simply make a reasonable
8 estimate based on the available facts." USSG §2T1.1, comment (n.1).
9 See also USSG §2T1.9, comment (backg'd) (Klein conspiracy "typically
10 is complex and may be far-reaching, making it quite difficult to
11 evaluate the extent of the revenue loss caused.")

12 Viewing the evidence in the light most favorable to the
13 defendant, he must have known that if his own tax loss was over
14 \$150,000, that of his two co-defendants, whom he knew to be medical
15 professionals who were concealing a substantial portion of their
16 income, would have been at least that much again, or in the vicinity
17 of over \$300,000. There is no evidentiary basis to claim, however,
18 that Bullock must have known that the total tax loss for all three
19 of them would have been over \$325,000. That determination was the
20 basis for the stipulation in the plea agreement, which calls for a
21 finding that the total tax loss, including relevant conduct, was
22 between \$200,000 and \$325,000. Bullock Plea Agreement at VB1.

23 The Government therefore objects to the determination at
24 paragraphs 25-32 of the presentence report that the total tax loss,
25 including relevant conduct, is more than \$325,000 and less than
26 \$550,000. In the Government's view, the total tax loss attributable
27 to this defendant should be more than \$200,000 but less than
28

1 \$325,000, for a base offense level of 16. Such a finding comports
2 with the plea agreement, and is warranted by a reasonable reading of
3 the known facts.

4 The Government otherwise agrees with the sentencing guideline
5 calculations in the Presentence report.² If the Government's
6 objection is sustained, therefore, the total offense level would be
7 a level 15, and the corresponding sentencing guideline range would
8 be 18 months to 24 months in prison.

9 **II. Restitution**

10 The offenses of conviction are not offenses to which mandatory
11 restitution attaches, and in any event the principal amount of the
12 back taxes owed by defendant Bullock to the IRS has not yet been
13 determined with specificity. The parties stipulated in the plea
14 agreement, however, pursuant to 18 U.S.C. § 3663(a)(3), that the
15 defendant would pay \$5,000 to the IRS in partial satisfaction of the
16 federal income taxes he owes. Bullock Plea Agreement IIC. The
17 Probation Officer reported that the defendant had a net worth of
18 \$137,518, disposable income of over \$1,300 per month, and retirement
19 and insurance assets. Bullock PSR ¶¶ 59-61. Nonetheless, the
20 Probation Officer did not follow the stipulation in the plea
21 agreement and recommend restitution, observing only that "the IRS
22 has the resources to collect any monies owed by the defendant."
23 Bullock PSR ¶ 62. The Probation Officer did recommend a fine in the
24

25
26 ² The Government notes that it specifically agrees with the
27 Probation Officer's determination that Bullock has accepted
28 responsibility for his conduct, and that it was impressed with the
frankness of the statement by defendant Bullock in that regard.
Bullock's statement contrasts sharply with that of defendant
Shearer, who continues to eschew responsibility for his unlawful
conduct.

1 amount of \$22,500. PSR ¶ 72.

2 The Government objects to the Probation Officer's decision not
3 to recommend any restitution. The fact that the IRS has the
4 capability of pursuing restitution is an irrelevant consideration.
5 Many other victims in other types of cases also have the capability
6 of pursuing civil remedies to obtain restitution. General
7 considerations relating to the ordering of restitution are not
8 suspended in criminal tax cases, when the Government is the victim.
9 Moreover, the IRS (and the California Franchise Tax Board) have been
10 unsuccessful in obtaining tax payments from Bullock in recent years;
11 his plea of guilty in this case does not insure the swift collection
12 of back taxes.

13 Section 5E1.1(a)(1) of the sentencing guidelines states that
14 the court "shall enter a restitution order for the full amount of
15 the victim's loss, if such order is authorized under 18 U.S.C. . . .
16 § 3663 . . ." Section 3663(a)(3) states that the court may order
17 restitution "to the extent agreed to by the parties in a plea
18 agreement." As noted above, in the plea agreement for this
19 defendant in this case, the parties expressly agreed "[p]ursuant to
20 18 U.S.C. section 3663(a)(3)," that the defendant would pay
21 restitution of \$5,000 to the IRS. Section 5E1.1(a)(1) therefore
22 appears to require that restitution be ordered to the extent that
23 the parties have agreed to it under section 3663(a)(3).
24

25 While it is clear that the defendant owes far more than \$5,000,
26 it is indisputable that he owes at least that much, and in order to
27 avoid the necessity for a full multiple year IRS audit in the
28 context of this proceeding, mandating partial payment of his debt as

1 restitution is proper. The defendant clearly has the ability to pay
2 restitution, and payment of some amount now would ameliorate some of
3 the harm caused by the defendant. Payment of restitution in the
4 amount of \$5,000 would also stop the accrual of interest and
5 penalties on that amount of back taxes.

6 While the Government believes that the recommended fine is in
7 accordance with the sentencing guidelines, in the Government's view
8 is more important that the IRS be made whole than the full fine be
9 paid to another agency of the Government. The Government notes that
10 in determining the amount of the fine, the court must consider any
11 restitution payments that the defendant is obligated to make. USSG
12 §5E1.2(d)(4). The Government would not object to a \$5,000 reduction
13 in the amount of the recommended fine in order to enable the
14 defendant to pay restitution in that amount.

15
16 **III. Government's Sentencing Recommendation**

17 In accordance with the Plea Agreement, the Government
18 recommends that the defendant be sentenced at the low end of the
19 guideline sentencing range. If the Government's objection to the
20 base offense level as calculated in the presentence report is
21 sustained, and the final guideline range is determined to be 18-24
22 months in prison, the Government recommends the low end of the
23 guideline range, 18 months in prison. If the Government's objection
24 is overruled, and the final guideline range is determined to be 21-
25 27 months in prison, the Government joins the Probation Officer in
26 recommending the low end of the guideline range, 21 months in
27 prison. The prison term should be imposed on each count, to run
28

1 concurrently. A three year term of supervised release is
2 recommended. The Government does not object to a reasonable self-
3 surrender date.


4 The Government also recommends that the defendant be ordered,
5 pursuant to 18 U.S.C. § 3663(a)(3) and USSG §5E1.1(a)(1), to pay
6 \$5,000 restitution to the IRS, and that he be ordered to pay the
7 minimum fine.

8 Finally, the defendant should be ordered to pay a special
9 assessment of \$200, and costs of prosecution (which are mandatory
10 under 26 U.S.C. § 7206(2)) of \$1,919.75. A Bill of Costs and
11 supporting documentation for that amount has been filed.
12

13
14
15 DATED: December 31, 2001

Respectfully submitted,

JOHN K. VINCENT
United States Attorney

16
17 By: 
18 BENJAMIN WAGNER
19 Assistant U.S. Attorney
20
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25
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27
28

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers.

That on December 31, 2001, he served a copy of the attached Government's Objection to Presentence Report and Sentencing Memorandum by placing said copy in a postage paid envelope addressed to the person hereinafter listed, and by depositing said envelope in the United States mail at Sacramento, California, and by faxing it to the number below. In addition, he served a copy on the Probation Officer by Inter-Office delivery.

SERVED BY MAIL


SERVED BY INTER-OFFICE DELIVERY

Jennifer Prager Sodaro
7373 E. Doubletree Ranch Rd.
Suite 200
Scottsdale, AZ 85258

fax (480) 367-~~9556~~

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Philip R. Hendley, Jr.
U.S. Probation Office
501 "I" Street, Suite 2500
Sacramento, CA 95814


BENJAMIN B. WAGNER